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REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Contribution of the Sub-Commission on the Promotion and Protection of Human Rights to the preparatory process for the World Conference

Addendum

Working paper on further proposals for the work of the World Conference submitted by Mr. Paulo Sérgio Pinheiro in his capacity as the representative of the Sub-Commission at the Preparatory Committee and the World Conference, in accordance with Sub-Commission resolution 2000/3 (para. 14)

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Introduction

1. In its resolution 1998/26 the Commission invited the Sub-Commission to carry out studies without delay, within the framework of the objectives laid down in General Assembly resolution 52/111, and to transmit its recommendations to the Commission and through the Commission to the Preparatory Committee.

2. During the last session of the Sub-Commission, I presented a working paper on proposals for the World Conference (A/CONF.189/PC.1/13/Add.1). In its resolution 2000/3, the Sub-Commission requested that the Secretary-General again provide for my participation in the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as at that Conference, as representative of the Sub-Commission.

3. This working paper is being submitted as an addendum to the previous working paper and aims to consolidate relevant findings of recent studies, propositions and recommendations that have been presented in several meetings, conferences and seminars in preparation for the World Conference.*

4. This addendum reflects an extraordinary flow of contributions from scholars, States and civil society. The addendum highlights some relevant points that might be useful during the discussion and elaboration of the Declaration and Programme of Action of the World Conference.

5. As the UNDP *Human Development Report 2000* indicated, most societies in the South as well as in the North generally fail to integrate minorities and to address horizontal inequality between ethnic groups or geographic regions. Indigenous peoples are still the most deprived of economic, social and cultural rights. Discrimination on the basis of sexual orientation continues throughout the world where civil and political rights of sexual minorities are violated and where they are denied the right to organize in advocacy groups.

6. Many countries affected by practices of racism have failed to demonstrate sufficient political will in the dissemination, promotion and enforcement of treaties, conventions, agreements and resolutions aimed at fighting racism, discrimination, anti-Semitism, xenophobia, intolerance and sexism.[1]

7. Their dialogue with the Committee on the Elimination of Racial Discrimination (CERD) clearly indicates practices of denial of racism by certain States parties to the treaty. Despite clear evidence to the contrary, some States claim that there is no racial discrimination in their territories and that their existing legislation does not require any alteration.

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* I would like to thank Ms. Charlotte Haynes, my research assistant during my stay as Visiting Professor at Brown University, for her collaboration in the research for this paper and the revision of its English version.

8. Mystification and denial of racial difference are widespread - in many cases sustained by the social construction of a supra-racial national identity. For instance, during the 1990s, there were many efforts by organizations of African descendants to engage in identity politics, advocating cultural and public policy reform to confront racism. But attempts to redress racial discrimination in many democratic countries through national legislation or through policy changes founded in human rights standards have been obstructed by the denial of racism.[2]

9. Denial can also be expressed by collective or institutionalized forms of silence that emerge in the shaping of a nation's social or political landscape, as exemplified by the traditional silence that surrounds the subject of racism towards persons of African descent in South America.[3] Such customary silences may constitute "cultural censorship", which is practised in the absence of explicit coercion or enforcement. However, it does tend to be constituted through, and circumscribed by, the political interests of the ruling classes and affects the access to rights by marginalized groups.

10. There was a clear consensus in several meetings in preparation for the Conference that all countries should be demanded to cease denying the existence of daily practices of racism and discrimination, discarding any pretence of the existence of "racial democracies". These just exist as ideological artefacts, concealing the real manifestations of racism. Racism exists in all societies in the world in different forms and manifestations. At the beginning of the new millennium, no country can claim to have established a consolidated "racial democracy".

11. The effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination is far from being successfully achieved. Citizenship is not yet guaranteed for large sectors of the population who live in conditions of dire poverty and social inequality. The list of the groups concerned is extensive: persons of African descent, indigenous peoples, peoples discriminated against because of descent, occupation or caste, the Roma and migrants from Eastern European, African, Asian and Arab countries, to name a few.

I. XENOPHOBIA

12. Despite the proliferation of greater discourse on tolerance of diversity and respect for human rights in the last decades of the twentieth century, xenophobic attitudes continue to prevail. With deep roots in practices of ethno-racial discrimination, xenophobia disproportionately affects foreigners or immigrants from countries with large indigenous or Afro-Latin populations.[4]

13. Xenophobia has also fed on wars and border skirmishes. Armed conflicts have served to unite the population around nationalistic ideals. On these occasions, the State has promoted "functional xenophobia" in order to ensure that, in the event of a conflict or war, citizens adhere to the values of their homeland.

14. As Martin Hopenhayn has indicated, xenophobia has served as a permanent rationale for both armed and diplomatic actions and has allowed States or nations means of ensuring popular support during armed conflicts against neighbours. Racist references to neighbouring countries "as enemies of the nation" circulate freely in times of crisis, by means of cultural manifestations, the media and the education system.

15. Xenophobia and racism may also be seen as appeals to the pact of solidarity to which modern States and societies have subscribed and which in times of intensified social conflicts (such as post-conflict transition processes) seem fragile in the eyes of downwardly mobile groups. Xenophobic discourse serves not only to reassure persons who engage in it of their identity, but may also, among other functions, work to reaffirm identity when nationalistic self-images run into crisis.[5]

16. In the face of the dangers of xenophobia, the World Conference must confront the need to build a culture of peace that integrates into its foundation the principles of tolerance and non-discrimination.

II. PEOPLE OF AFRICAN DESCENT

17. The main victims of racism in the Americas are the indigenous peoples and people of African descent. The latter continue to be the victims of multiple forms of racism, including institutional, systemic and structural racism. Despite this situation, instead of acknowledging that these practices exist and working to eliminate them, most States deny the existence of racism and its consequences for marginalized populations.[6]

18. Women of African descent are affected by racism and racial discrimination in differentiated and profound ways, which worsen their precarious conditions and systematic exclusion from the political, social, economic and cultural spheres and provoke devastating consequences for the new generations of African descent.

19. People of African descent are the victims of discriminatory treatment in police procedure and legal and judiciary processes. Moreover, the inhuman situation of prison heavily affects people of African descent. Discrimination is dramatically present in the criminal law context. People of African descent are more frequently the targets of racial profiling by State agents in many countries, for example in the Americas and in Western Europe, and become the victims of discriminatory police repression. Colour has proven itself a powerful instrument of discrimination in the distribution of justice.

20. People of colour confront greater obstacles and have difficulty exercising their right to adequate defence. As a result, they are more likely to be punished than whites and tend to receive more severe penal treatment, such as capital punishment in countries like the United States of America that still have the death penalty.

21. Moreover, legal rights can contribute towards increasing people of African descent's access to political rights and productive resources. From a human rights perspective, development efforts must work to eliminate racial discrimination through programmes and processes that can help Governments to reform legal systems and outlaw discrimination in employment, education, credit services and other entitlements. Efforts must also be made to educate and empower people of African descent and to enable them to participate effectively in development.

22. National and local judiciaries, legislatures and electoral bodies are crucial to the protection and promotion of the human rights of people of African descent. They can ensure the rule of law and the enforcement of the law, thus helping to establish anti-discriminatory practices and achieve social-economic, political and cultural equality.

23. The declaration and programme of action to be adopted by the World Conference must state with precision and insistence that the rights of people of African descent are human rights. It is not sufficient only to affirm the value of equality, as was repeatedly done at the previous Conferences and during the three United Nations Decades against Racism.

24. The recognition of the worth of people of African descent and their equality with other majority groups must be complemented by various institutional protections and policies. Legal rights can enhance the living conditions of their families, through legislation that effectively prohibits racial bias in employment, discrimination in pay and incentives, and lawless violence.

III. MIGRANTS

25. "In the contemporary debate concerning European integration and the so-called 'problem' of Third World immigration, the themes of culture and cultural difference have gained new prominence. The political right parties in Europe have in the 1990s developed a political rhetoric of exclusion in which Third World immigrants, who proceed in part from its former colonies, are construed as posing a threat to the national unity of the 'host' countries because they are culturally different. This assumption underlines the radical opposition between nationals and immigrants as foreigners, rationalizing the call for restrictive immigration policies."[7]

26. This "fundamentalist" racism brings new components to traditional racism, which the World Conference must take into consideration. Other studies have called attention to other features of "new racism", which may also include the notion of cultural rather than biological difference, the abstract and decontextualized use of the discourse of liberalism and individualism to rationalize racial inequality, and a celebration of nationalism that at times acquires an "ethno-national" character.[8]

27. The number of migrant workers and trafficking victims has grown with international trade, yet the abuses remain largely ignored. Experience shows that global economic integration is no substitute for a firm parallel commitment to defending human rights. Millions of people who are excluded from the global economy are forced to accept it on unsatisfactory terms. In this divisive debate, human rights offer a promising framework to address the ill-effects of globalization.

28. Migrants frequently find themselves in a situation of vulnerability owing to their absence from their country of origin and the enormous difficulties of adapting to a new language and culture. Moreover, undocumented migrants encounter further economic and social obstacles upon return to their country. In many developed countries, the migrants have been turned into scapegoats for real or perceived economic and social problems.[9]

IV. STRUCTURAL RACISM AND GLOBALIZATION

29. It is important to acknowledge the structural inequality that affects the poorest sectors of the population in many societies. The *Human Development Report 2000* indicates that the opportunities for equal wages and equal employment may be formally recognized but are lacking due to ineffective enforcement of laws. Gaps remain in many sectors for women, people of African descent, groups discriminated against for their ancestry or caste, the Roma, indigenous peoples and tribal peoples.

30. Exclusion and marginalization condemn people of African descent to poverty in all of the Americas. The situation has been aggravated by the implementation of economic policies that do not respect diversity and contribute to the systemic violation of their rights. People of African descent who are migrants, youth or displaced persons suffer discrimination on a multitude of levels due to the limitations on their access to education, housing, employment and health services and generally the full enjoyment of human development.

31. The UPEACE Report on Human Rights and Peace[10] has provided a very balanced characterization of the advantages and of the perverse effects of globalization. We think that interpretation, which we transcribe here, extremely pertinent for an understanding of the connections between some effects of globalization and racism and could be extremely useful for the declaration and programme of action to be adopted by the World Conference.

> "Recent massive economic, political and social changes have isolated individuals and fragmented communities in many parts of the world. For the poor, the situation is especially acute because they have less capacity to adapt to dislocation. The increased international flow of trade, capital and information has delivered undeniable wealth and opportunity for many. Global economic integration has indeed created opportunities for people around the world. However, there is a marked discrepancy among countries with respect to gains from expanding trade as well as access to foreign direct investment and new technologies. Many of the poorest countries are marginalized from these emerging opportunities. The income gap between poorest and richest countries is widening.
>
> "There is a widespread uneasiness about some of the associated and parallel ills of rapid globalization. Income inequality is growing, as are the number of people in abject poverty. The current over-arching policy goal of liberalizing and promoting trade at any cost leaves little or no room for human rights considerations, even when the ultimate intention is income growth.
>
> "Globalization, through the sustained promotion of trade liberalization and heightened competition for new markets has not resulted in unequivocal gains for all sectors of societies. The fact that not all sectors have enjoyed equally the benefits and opportunities of globalization and the associated increase in communication flows is not conducive to the establishment of a culture of human rights and peace, which fully protects the rights of minorities. Relevant international human rights standards exist but are not uniformly ratified, effectively enforced, or adequately integrated in rules to influence the multilateral trading system.

> "There is a clear and urgent need for a greater involvement of financial and trade organizations, such as the Bretton Woods institutions and the World Trade Organization in the commitment for the protection of human rights worldwide. A world economy increasingly integrated through trade interests and capital flows does not necessarily lead to human rights improvement. However, such improvement may turn out to be essential for the sustainable development stability of the world economy and for tangible, widely shared increases in human welfare."[11]

32. The Working Group of the Comparative Human Relations Initiative, Beyond Racism, has proposed[12] that the United Nations, through the Office of the High Commissioner for Human Rights should conduct a study, the content of which would be reported publicly no later than three years hence, of options and policies that could/should be implemented to ensure that the multinational business and international agencies such as the World Bank, the International Monetary Fund, the Development Banks, among others, respond to the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination.

33. One of the greatest challenges posed by globalization is the regulation of transnational agencies - financial institutions, multilateral and international agencies - to ensure compliance with the non-discrimination principles set forth in the Convention. Since most domestic laws governing anti-discrimination do not provide for extraterritorial enforcement, finding better ways to promote compliance by such entities with the Convention is a pressing matter. We acknowledge that there are a variety of efforts by civil society organizations now under way to explore these issues, but we think that the United Nations should exert leadership in this regard.

34. A culture beyond racism is more than the absence of racial discrimination. Promoting a culture beyond racism requires continuity and ongoing attention. However, the mere promotion of non-discrimination practices will not be enough. It will also require removing the social tensions which contribute to racism, xenophobia and other forms of intolerance created by inequality, poverty, social exclusion and violations of civil and political rights.

V. A CULTURE BEYOND RACISM

35. At this particular moment in history, the world has become more tightly integrated into a nexus of transnational and global fields. Yet in this age of globalization, differences in cultural and "racial" identities are being produced or reproduced with heightened intensity. In some contexts, as in Central Europe, Africa and Asia, populations with long acknowledged claims to distinct ethnic histories are being defined as racialized or as "others" and "cleansed" from within newly drawn boundaries of racial terrain. The deepening of identity politics, in many instances along lines of conflict and war, has become a global problem that the World Conference must deal with in order to contribute to a solution of peaceful means and negotiation.[13]

36. The UPEACE Report on Human Rights and Peace clearly demonstrates that a major problem in contemporary societies is the tendency towards a rigid categorization of culture - which could include race. This categorization has led to policies of exclusion and/or of homogenization, which has further contributed to the disrespect of cultural diversity. Attitudes

of tolerance and cooperation are breaking down with the resurgence of exclusion, the construction of cultural, ethnic and religious boundaries, gender violence, and the destruction of whole communities and their cherished cultural heritage and traditions.

37. The UPEACE report shows that we are witnessing in many areas not the building of peace but a spread of violence that has reached unacceptable proportions. Its consequences on society are multifaceted. Civil wars, endemic violence, racial discrimination and xenophobia provide graphic indicators of this process. The most affected groups include precisely those who frequently find themselves the preferred targets of racism, intolerance and xenophobia: women and children, particularly child soldiers, the aged and handicapped, economic migrants, refugees and indigenous peoples.

38. Cultural identities, which are simultaneously inclusive and exclusive, have always existed. The identities themselves and the cultural traditions on which they are built may not have changed much. What have experienced dramatic change are the conditions under which different identities live together in a shared social and cultural space. What is new is the threat to invade other communities or cultures and destroy them.[14] This threat is what underlies the urgency to protect human rights, to struggle against discrimination and to promote understanding, respect and tolerance for constructive coexistence and peace.

39. On the other hand, as the UPEACE report acknowledges, we must recognize that the "ethnicization" of conflicts or a *politique identitaire* may also trigger conflict in that these tendencies reduce solidarity towards the victims of violence. As a result, those victims are perceived as foreign and even dehumanized persons. When peoples' identities are narrowed down to a single focus, social divisions become deeper and more rigid. Ethnicity is a deeply emotional basis upon which violent mobilization can be triggered against "the other", often resulting in the dehumanization of the other group. Consequently, discrimination against and oppression of specific groups can be aggravated.

40. Fostering understanding and openness to cultural diversity must be one of the objectives of the programme of action of the World Conference in its struggle against racism. The full understanding of the diversity among cultures and peoples becomes a prerequisite for establishing "peace with one another, peace with our environment and peace with ourselves", as UPEACE President Maurice Strong pointed out in opening the Expert Seminar.

VI. A STRATEGY FOR THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION AND THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

41. Perhaps the most important initiative that the World Conference will perform is to make an evaluation of the current situation of the International Convention on the Elimination of All Forms of Racial Discrimination and the role it has performed over the three decades since its adoption by the United Nations General Assembly in 1965. Although 156 States have ratified the Convention, more than 40 have not. Just 30 States parties to the treaty have made a declaration under article 14. An impressive number of States have been late in reporting, with three having received over 25 reminders each.[15]

42. This is unacceptable in the struggle to combat racial discrimination and, therefore, a central objective of the Conference should be to promote universal ratification of the Convention.[16]

43. As Minority Rights Group recently assessed, it is necessary to acknowledge that since the 1960s there have been great advances in the relationship between Governments and international experts in the domestic struggle to combat racial discrimination.

44. Unfortunately, very few States report regularly every two years. In 1999, 54 States parties to the Convention had fallen behind to such an extent that three or more of their reports were overdue. The World Conference must also consider the difficult conditions of work of the Committee on the Elimination of Racial Discrimination (CERD): during the period 1986-1990 it was able to hold just half of its scheduled meetings, because some States were not paying their dues.

45. The World Conference should take into consideration as an extremely useful tool the "Synopsis of the dialogue between State parties and CERD - as of September 2000". What is the picture presented by this dialogue? From the synopsis it is possible to have a sense of some outstanding contributions of the work of CERD. It is very clear from this synopsis that CERD made numerous attempts to give early warning of impending ethnic conflict or at least increased conflict in the Great Lakes region.

46. As the Comparative Human Relations Initiative has proposed, what is needed now is that each government should be required in the next three years to demonstrate via reporting to CERD that it has enacted laws and policies that bar discrimination as defined in the Convention and has provided for civil enforcement of such laws and policies. This should become the minimum threshold commitment for compliance with the Convention. The lack of such provision and supported policies presents the serious risk that the protections provided by the Convention will become illusory.[17]

47. After 1993, CERD developed several initiatives in the direction of prevention of racial discrimination. The World Conference may be inspired by the adoption by CERD of an outline of early warning measures and urgent procedures.

48. In conclusion, balancing the achievements and the setbacks of CERD, the World Conference must analyse many aspects of the participation of States in the work of that treaty body. The synopsis to which we have previously referred indicates some clear limitation of the ability of CERD, despite all its efforts, to effectively monitor States' fulfilment of their obligations. As we have seen, many reports are overdue and the Committee's review process apparently is not succeeding in building States' accountability. The World Conference must find ways to strengthen the capacity of CERD to make States comply with their obligations.

49. Victims of racial discrimination in the 30 States parties which have accepted article 14 have communicated very few individual petitions to CERD. It is evident that there is a clear necessity to urge States to make a declaration under article 14 and for all Government and civil society actors to work towards its promotion and facilitation.[18]

50. In the future, it will be important to develop further the process of submission of communications under article 14 that allows individuals or groups of individuals to report incidences of failure on the part of States to fulfil their obligations. This function has the potential to become a pivotal aspect of the work of CERD and should be developed to complement the procedure of examination of the periodic reports. The allegations of violations of racial discrimination under article 14, precisely because of their individual characteristics, may become a decisive component of the knowledge of each State's situation.

Notes

[1] Final Document of the Mexican and Central American Regional Forum on Racism, Discrimination and Intolerance, Non-governmental organizations. Mexico City, 9-10 November 2000.

[2] Rebecca Reichmann, "Brazil's denial of race", *NACLA Report on the Americas*, vol. 28 (May-June 1995) pp. 35-42.

[3] Robin E.Sheriff, "Exposing silence as cultural censorship: a Brazilian case". American Anthropologist, vol. 102, No. 1 (March 2000) pp. 114-32.

[4] Martin Hopenhayn, (Representative of the Economic Commission for Latin America and the Caribbean), "General trends, priorities and obstacles in the struggle against racism, racial discrimination, xenophobia and related intolerance", background paper prepared for the Latin America and the Caribbean Regional Seminar of Experts for Latin America and the Caribbean on Economic, Social and Legal Measures for Combating Racism, with Special Reference to Vulnerable Groups, in preparation for the World Conference, Santiago, Chile, 25-27 October 2000.

[5] Andreas Wimmer, "Explaining xenophobia and racism: a critical review of current research approaches", *Ethnic and Racial Studies*, vol. 1 (January 1997) pp. 17-41.

[6] For this section, see documents of the Citizens' Conference and Preparatory Conference for the Americas, World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, Santiago, Chile, 4-7 December 2000.

[7] Verena Stolcke, "New boundaries, new rhetoric of exclusion in Europe", *Current Anthropology*, vol. 36, No. 1, (February 1995) p. 1.

[8] Eduardo Bonilla-Silva, "This is a white country: the racial ideology of the western nations of the world-system" *Sociological Inquiry* v. 70, No. 2 (Spring 2000) pp. 188-214.

[9] " Declaration of the African NGO Forum", African Regional Conference for the World Conference against Racism, Racial and Ethnic Discrimination, Xenophobia and Related Intolerance, Dakar, Senegal, 20-21 January 2001.

[10] United Nations University for Peace, *UPEACE Report on Human Rights and Peace*, Expert Seminar on Human Rights and Peace, Palais Wilson, Geneva, 8-9 December 2000.

[11] UPEACE Report. op. cit.

[12] Lynn Huntley, "Submission of the Southern Education Foundation's Comparative Human Relations Initiative to Second Preparatory Conference Delegates [for the World Conference]." 17 January 2001, p. 4.

[13] Faye Harrison, "Introduction: expanding the discourse on 'Race'", *American Anthropologist*, vol. 100, No. 3 (September 1998) pp. 609-631.

[14] R. Kothari, "Escaping the trap of cultural diversity", *Himal* (1992) p. 16.

[15] Minority Rights Group International Secretariat, "Strengthening the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)". Report of the Expert Meeting convened by Minority Rights Group International in cooperation with the Office of the United Nations High Commissioner for Human Rights, Palais Wilson, Geneva, 5 August 2000.

[16] Michael Banton, *Combating Racial Discrimination: the UN and its Member States*, London, Minority Rights Group International, 2000.

[17] Lynn Huntley, op. cit.

[18] Michael Banton, op.cit.